

APPEAL PROCEDURES OF THE HOSPITAL BUILDING SAFETY BOARD

The Hospital Building Safety Board (Board) was established in the original Hospital Seismic Safety Act (Act) of 1972. The purpose of the Board is to advise the Director of the Office of Statewide Health Planning and Development (OSHPD) on the administration of the Act and serve as a board of appeals in all matters relating to the administration and enforcement of building standards relating to the design, construction, alteration, and seismic safety of hospital building projects submitted to OSHPD. Further, the Board acts as a board of appeals in matters relating to all fire and panic safety regulations and alternate means of protection determinations for hospital building projects.

In its advisory capacity, the Board meets on a quarterly basis in January, April, July, and October. All meetings are open to the public and members of the hospital design and construction industry are welcome to attend.

Materials contained in this package include information regarding the Board's appeal process - what it is, how it works, and what to do if you want to initiate the process. For more information, please contact:

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From time to time, differences of opinion will surface between the Office of Statewide Health Planning and Development (OSHPD) audits clients relating to matters concerning building standards as they apply to the planning, construction or alteration of hospital projects. Before the differences escalate into a more formal appeal process, clients may ask OSHPD for reconsideration through a second level review process. OSHPD is dedicated to keeping open lines of communication between staff and clients and discussion of differences is encouraged.

However, in the event of continuing disagreement with a decision of OSHPD, an appeal may be made to the Hospital Building Safety Board (Board). The appeal would be considered following the failure of an informal conference held with OSHPD in an attempt to resolve the appeal issue.

To initiate the appeal process, within six (6) months of an OSHPD decision, a request for an informal conference can be made to OSHPD via the Executive Director of the Hospital Building Safety Board. OSHPD would notify the appellant within ten (10) days of the date of the conference which would be held within twenty (20) days of receipt of the request for the informal conference. Within seven (7) days following the conference, OSHPD would notify the appellant of its decision on the matter. The decision would either confirm, modify or reverse the decision.

If the appellant disagrees with the decision, a formal hearing may be requested of the Hospital Building Safety Board. The appellant would submit a written request for appeal to the Board within fourteen (14) days of receipt of the results of the informal conference and send documents supporting the request for a formal hearing. The Hospital Building Safety Board, or a committee of the Board, would hold a public hearing on the appeal within forty-five (45) days of the receipt of documents supporting the request for an appeal hearing. At the hearing, the appellant has the right to counsel, to submit documentary evidence and exhibits and to have witnesses appear and testify although the hearing is not conducted in accordance with strict rules of evidence or courtroom procedures.

If a committee of the Board conducts the formal hearing and all parties agree to the decision in writing, the appeal action is terminated. If all parties do not agree with the recommended decision, the committee transmits the issue to the Board for consideration. The Board then has thirty (30) days (unless further study is required) to hear the final arguments from the appellant and render a decision on the appeal. The Board will notify the appellant within fifteen (15) days of the public hearing of its decision(s), which becomes effective immediately.

The time periods outlined above are the maximum times specified in regulation. However, every effort is made by OSHPD and the Hospital Building Safety Board to expedite the process. Historically, 20% of the appeals have been settled at the informal conference level, 75% at the Hospital Building Safety Board Committee level, with less than 5% going to the full Board.

Should you have any further questions about the appeal process, please contact Patricia Heerhartz, Executive Director of the Hospital Building Safety Board, at (916) 654-3648.

**HEALTH AND SAFETY CODE
DIVISION 107 STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

Part 7

FACILITIES DESIGN REVIEW AND CONSTRUCTION

Chapter 1

HEALTH FACILITIES

**ALSO KNOWN AS THE ALFRED E. ALQUIST HOSPITAL FACILITIES
SEISMIC SAFETY ACT 1983 (HSSA 83)**

Article 5

BUILDING SAFETY BOARD

§129925. Duties

There is in the office a Hospital Building Safety Board that shall be appointed by the director. The board shall advise the director and, notwithstanding Section 13142.6 and except as provided in Section 18945, shall act as a board of appeals in all matters relating to the administration and enforcement of building standards relating to the design, construction, alteration, and seismic safety of hospital building projects submitted to the office pursuant to this chapter.

Further, notwithstanding Section 13142.6, the board shall act as the board of appeals in matters relating to all fire and panic safety regulations and alternate means of protection determinations for hospital building projects submitted to the office pursuant to this chapter.

§ 13142.6. Appeals

(a) The board, under the direction of the vice chairman, shall sit as a board of appeals on the application of the State Fire Marshal's regulations excepting application of building standards published in the State Building Standards Code, by the State Fire Marshal or his salaried assistants. When any affected person believes that such regulations, excepting building standards, are being applied incorrectly, such person may appeal the decision of the State Fire Marshal to the board. The board shall not consider any such appeal unless the matter has come to the attention of the State Fire Marshal and he has rendered a decision in writing. Any appeal to the board shall be made by the affected person or his agent in writing in the form and manner prescribed by the board. The decision of the board shall be binding upon the State Fire Marshal. Any decision made by the board shall be for the instant case only and shall not be construed as setting precedent for general application.

(b) When any affected person believes that such building standards are being applied incorrectly by the State Fire Marshal or his salaried assistants, such person may appeal to the State Building Standards Commission pursuant to Chapter 5 (commencing with Section 18945) of Part 2.5 of Division 13 of this code.

§ 18945. Right to appeal

(a) Any person adversely affected by any regulation, rules, omission, interpretation, decision, or practice of any state agency respecting the administration of any building standard may appeal the issue for resolution to the commission.

(b) If any local agency having authority to enforce a state building standard and any person adversely affected by any regulation, rule, omission, interpretation, decision, or practice of such agency respecting such building standard both wish to appeal the issue for resolution to the commission, then both parties may appeal to the commission. The commission may accept such appeal only if the commission determines that the issues involved in such appeal have statewide significance.

STATE BUILDING STANDARDS CODE
(Part 1, Title 24, C.C.R.)

ADMINISTRATIVE REGULATIONS FOR THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT (OSHDP)
HOSPITAL BUILDING SAFETY

CHAPTER 7. SAFETY STANDARDS FOR HEALTH FACILITIES

Article 5. Appeals to the Hospital Building Safety Board

7-159. Appeals.

(a) The Hospital Building Safety Board except as provided in Section 18945 Health and Safety Code, shall act as a board of appeals in all matters relating to the administration and enforcement of building standards relating to the design, construction, alteration, and seismic safety of health facility projects submitted to the Office pursuant to Chapter 7, Division 107, Health and Safety Code.

Further, notwithstanding Section 13142.6 Health and Safety Code, the board shall act as the board of appeals in matters relating to all fire and panic safety regulations and alternate means of protection determinations for health facility projects submitted to the Office pursuant to Chapter 7, Division 107, Health and Safety Code.

(b) In the event of disagreement with the rulings, orders, decisions or acts of the Office, acting within the scope of Division 107, (commencing with Section 129675) of the Health and Safety Code, an appeal may be made by the current or prospective licensee or their authorized agent, hereafter known as the appellant of a health facility to the Hospital Building Safety Board. Such appeal shall be considered by the Hospital Building Safety Board only following the failure of an informal conference, held to resolve the appeal in accordance with Section 7-161.

NOTE: Authority cited: Sections 446.3, 129850, and 129925 Health and Safety Code.
Reference: Sections 129675-129998, Health and Safety Code.

7-161. Informal Conference.

(a) Within six months of a ruling, order, decision or act of the Office, acting within the scope of Division 107, (commencing with Section 129675) of the Health and Safety Code, the appellant may issue a written request for an informal conference upon such ruling, order, decision or act to the Office.

(b) Within 10 days of receipt of a written request for an informal conference, the Office shall give notice of the date, time and place of such conference to review the ruling, order, decision or act being questioned. The informal conference shall be in a convenient place mutually agreeable to the parties. The informal conference shall be held within 20 days of receipt by the Office of the written request for an informal conference.

(c) The informal conference shall be conducted by an Office representative. Parties to the such conference may include the appellant, architect and engineers and other appropriate consultants under contract to the appellant or the appellant's legal counsel.

(d) The purpose of the informal conference shall be to discuss the ruling, order, decision or act of the Office with the intent to resolve the issue.

(e) Within seven days following the informal conference, the Office shall notify the appellant in writing as to the Office's action on the ruling, order, decision or act. Such action shall be to confirm, modify, or reverse the original ruling, order, decision or act.

NOTE: Authority cited: Sections 446.3, 129850, and 129925 Health and Safety Code.
Reference: Sections 129675-129998, Health and Safety Code.

7-163. Formal Hearing Request.

(a) If the appellant wishes to continue an appeal after the Office's decision following the informal conference, a formal hearing may be requested of the Hospital Building Safety Board. The appellant shall submit a written request for an appeal to the Hospital Building Safety Board through the Office within 14 days of receipt of the notice of the result of the informal conference.

(b) The notice of appeal shall be followed within 60 days by documents supporting the request for a formal hearing before the Hospital Building Safety Board. Such documents shall be submitted to the Office and shall contain specific information regarding the Office's ruling, order, decision or act and the basis for the appeal.

NOTE: Authority cited: Sections 446.3 and 129850, Health and Safety Code. Reference: Sections 129675-129998, Health and Safety Code.

7-165. Formal Hearing.

(a) The Hospital Building Safety Board, or a committee of the Board, appointed by the Chair of the Board, shall act as the hearing body and shall conduct a public hearing on the appeal.

(b) The Chair of the Hospital Building Safety Board shall call a hearing on an appeal. The hearing shall be convened at a location selected by the Chair which, where possible, is reasonably close to the appellant.

(c) The hearing shall be held within 45 days of the receipt of documents supporting the request for an appeal hearing. Within 15 days of the Office's receipt of the supporting documentation, the parties to the appeal shall be notified in writing of the time and place of the hearing and the composition of the hearing body.

(d) The Chair of the Hospital Building Safety Board shall develop, and have sent to each member, an agenda listing the matters to be considered and, insofar as practicable, copies of all written reports which are to be presented to the Board. The agenda and written reports shall be provided to the members of the Board at least 10 days before the date of the hearing.

(e) Whenever notice of an appeal hearing for decision of an appeal is issued by the Hospital Building Safety Board or a committee of the Board, such notice shall be provided to the appellant, the Office and all parties to the action at least 10 days before the date of the hearing.

(f) If a committee of the Board is appointed to hear the appeal, at least five voting members of the Board shall be appointed to such committee. The Chair of the hearing committee shall be appointed by the Chair of the Hospital Building Safety Board. The appeal shall be heard by at least three of the voting members appointed to an appeal committee. The decision shall bear the endorsement of a simple majority of the committee members present.

(g) If the Board is to hear the appeal, at least nine voting members of the Board shall be present to hear the matter. The decision shall bear the endorsement of a simple majority of the Board members present.

(h) The proceedings shall be recorded by tape recorder. Transcripts shall be made available to anyone making a request therefor upon deposit with the Hospital Building Safety Board of the amount of money which the Board has determined necessary to cover the costs of transcript preparation. In addition to the tape recording of the proceedings, decisions of the Board or a committee of the Board shall be recorded by stenographic recording and shown in the minutes of the meeting. The minutes shall show how each Board or committee member voted on the decision.

(l) The appellant may, at his own expense, arrange for stenographic recording and transcription of the hearings.

NOTE: Authority cited: Sections 446.3 and 129850, Health and Safety Code. Reference: Sections 129675-129998, Health and Safety Code.

7-167. Rights of the Appellant.

(a) The appellant shall have the right to counsel, to submit documentary evidence and exhibits, and to have witnesses appear and testify. These rights shall be executed by the appellant at its own expense.

(b) The appellant shall have the right to question representatives of the Office and other witnesses presenting testimony or documents in the hearing.

(c) The appellant shall have the right to question potential conflicts of interest of any voting member of the Hospital Building Safety Board or committee of the Board hearing an appeal. The Chair of the hearing will rule on such potential conflict and the ruling shall be entered in the record of the hearing.

NOTE: Authority cited: Sections 446.3 and 129850, Health and Safety Code. Reference: Sections 129675-129998, Health and Safety Code.

7-169. Appeal Hearing Procedure.

(a) An appeal hearing conducted by the Hospital Building Safety Board or a committee of the Board shall not be conducted in accordance with strict rules of evidence or courtroom procedure. During the hearing, the Chair may accept into the record without formal proof any generally accepted technical or scientific matter related to seismic, architectural, structural, mechanical, electrical, fire and life safety of health facilities.

Hearsay evidence may be allowed for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support the findings.

(b) The Chair of the hearing shall determine the order of witnesses and presentation and introduction of documents, evidence and exhibits into the record of the hearing. The Chair may impose reasonable time limits, rule on admissibility of evidence, maintain decorum in the hearings, call recesses and rule on continuation of the hearings.

(c) The Chair may request counsel from the Office for advice on points of law.

(d) Prior to the closing of the hearing, the Chair shall announce either of the following:

(1) The recommended decision of the committee of the Board.

(2) The decision of the Board.

NOTE: Authority cited: Sections 446.3 and 129850, Health and Safety Code. Reference: Sections 129675-129998, Health and Safety Code.

7-171. Decision on Appeal.

(a) Decision on an appeal heard by a committee of the Board shall be reached as follows:

(1) If all parties agree to the decision recommended by a committee of the Board, the agreement and the names of parties to the appeal shall be entered in the record. The appeal action shall be considered terminated when all parties to the appeal have stipulated to the agreement in writing.

(2) If all parties to the appeal do not agree with the decision recommended by a committee, the findings of fact, supporting documents, evidence, exhibits and decision recommended by the committee shall be transmitted to the Hospital Building Safety Board.

(3) Within 30 days after the findings of fact, supporting documents, evidence exhibits and a recommended decision are received, the Board shall hear final arguments from the appellant and render a decision on the appeal. The appellant, its counsel or its representatives may not introduce new evidence without approval of the Board.

(b) Decision on an appeal heard by or referred to the Hospital Building Safety Board shall be reached as follows:

(1) The Board shall render a decision in public meeting and transmit such decision in writing to each party to the appeal hearing within 15 days after the close of the hearing.

(2) The Board may affirm, reverse or amend the ruling, order, decision or act being appealed or remand the issue for further study.

(3) If the Board remands all or a portion of the issues at appeal for further study, the Board shall specify the issues or matters to be studied, who is to study the issues and completion dates for such further study.

(4) Findings and recommendations from further study will be transmitted to all parties to the action prior to the Hospital Building Safety Board's public hearing for decision.

(5) Within 30 days of receipt of the findings and recommendations from further study of the issues, the Hospital Building Safety Board shall convene a public hearing to consider the findings and recommendations and arguments from the appellant or the appellant's representatives. The decision of the Hospital Building Safety Board shall be announced in public hearing and transmitted in writing to all parties involved within 30 days of the conclusion of the public hearing.

(6) Decisions of the Hospital Building Safety Board shall become effective immediately upon their announcements by the Chair of the Board, unless otherwise specified by the Chair.

(c) Should the appellant determine it has been adversely affected by the decision of the Hospital Building Safety Board, the appellant may further appeal the issue for resolution by the California Building Standards Commission, in accordance with Health and Safety Code Section 18945.

NOTE: Authority cited: Sections 446.3 and 129850, Health and Safety Code. Reference: Sections 129675-129998, Health and Safety Code.